IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 647 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAH CHAMPAKLAL KANTILAL

Versus

STATE BANK OF SAURASHTRA

Appearance:

1. First Appeal No. 647 of 2002

MR PJ YAGNIK for Petitioner No. 1

MR SANDEEP N BHATT for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 04/02/2003

ORAL JUDGEMENT

This appeal is directed against the judgement

order and decree dated 30.7.2001 passed by the Civil Judge (S.D), Dhrangadhra in Special Civil Suit No. 63 of 1993, whereby the learned Judge decreed the said suit filed by the State Bank of Saurashtra - respondent No.1 herein against the appellant (defendant No.1) and the respondent No.2.

2. The Bank had filed the said suit to recover Rs. 68,229.78 with interest from the date of the suit till the date of realisation.

3. The appellant was the principal debtor and the respondent No.2 was the surety. According to the Bank a loan of Rs. 50,000/- by way of Demand Cash Credit was advanced to the appellant on 2.11.1983. The Bank filed the suit to recover the outstanding amount.

4. It appears from the judgement that a number of adjournments were granted to the appellant but he did not file any written statement. It was only respondent No.2 who filed the written statement. The learned trial Judge after recording the evidence led by the plaintiff came to the conclusion that the Bank had proved its claim against the defendant and passed the decree for the amount claimed with interest at the rate of 13.5 per cent from the date of the suit till realisation.

5. It is urged on behalf of the appellant that decree was passed against him ex-parte without affording any opportunity of hearing. It is stated in paragraph 5 of the memo of appeal that pending the controversy one of the Advocates Mr. R.D.Patel was selected and joined the judiciary as Civil Judge (J.D) and that information was not given to him by the Advocate's office and therefore the appellant was not able to defend his case. However, in the judgement appearance of Advocate Shri R.D. Patel is shown for the defendants. More over the suit was filed in the year 1991 and till the suit was tried the appellant did not file any written statement. In the facts and circumstances of the case the Court was justified in proceeding with the trial of the suit when the appellant failed to file any written statement. On merits the findings recorded by the learned Judge on appreciation of the evidence on record, are unassailable. There is no substance in the appeal and the same is dismissed. Notice is discharged.

(M. C. Patel, J.)

*/Mohandas